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16 **UNITED STATES DISTRICT COURT**  
17 **NORTHERN DISTRICT OF CALIFORNIA**

18  
19 CALIFORNIANS FOR DISABILITY  
20 RIGHTS, INC. ("CDR"), CALIFORNIA  
COUNCIL OF THE BLIND ("CCB"),  
21 BEN ROCKWELL and DMITRI  
BELSER, on behalf of themselves, and on  
22 behalf of all others similarly situated,

23 Plaintiffs,

24 v.

25 CALIFORNIA DEPARTMENT OF  
TRANSPORTATION ("Caltrans") and WILL  
26 KEMPTON, in his official capacity.

27 Defendants.  
28

Case No. C-06-5125 SBA

**REPLY DECLARATION OF RONALD  
ELSBERRY IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
REASONABLE ATTORNEYS' FEES  
AND COSTS**

Date: May 13, 2010

Time: 10:00 a.m.

Judge: Hon. Maria-Elena James

1 I, RONALD ELSBERRY, declare:

2 1. I have personal knowledge of the facts contained in this declaration and, if called  
3 as a witness, am competent to testify as to those facts.

4 2. I am an attorney at law, duly licensed to practice law in California and in this  
5 Court.

6 3. Defendants filed their opposition to Plaintiffs' motion for fees and costs on April  
7 21, 2010. Docket No. 492.

8 4. In support of their opposition, Defendants also filed the Declaration of Gregory  
9 Hurley, which included numerous exhibits filed as four separate documents. Docket Nos. 493,  
10 493-1, 493-2, 493-3, and 493-4. According to the ECF notice of the filing of these documents,  
11 they were received after midnight (i.e., on April 22, 2010), but filed on April 21, 2010. A true  
12 and correct copy of this ECF notice is attached hereto as **Exhibit A**.

13 5. On April 22, the Court filed the following docket entry: "Deadlines terminated re  
14 Response Deadline re [460] Motion for Attorney Fees and Costs." A true and correct copy of the  
15 ECF notice of this entry is attached hereto as **Exhibit B**.

16 6. In reviewing Defendants' opposition and the supporting documents filed  
17 therewith, on April 26, 2010, I first noticed that Mr. Hurley's declaration referred to two exhibits  
18 that had not been filed on April 21 with the documents referenced in paragraph 4 above. Those  
19 exhibits are Exhibits P and Q, which are referenced in paragraph 53 of Mr. Hurley's declaration.  
20 According to paragraph 53, Exhibit P is "a true and correct copy of a chart prepared by [Mr.  
21 Hurley's] office under [his] supervision for DRA," reflecting deductions that Defendants request  
22 that the Court make from DRA's requested fees. Purported grounds for such deductions are set  
23 forth in paragraphs 50 through 53 of Mr. Hurley's declaration. Exhibit Q is described as a  
24 similar chart for deductions Defendants request that the Court make from fees requested for  
25 Skadden, Arps. Exhibit N, which was filed on April 21, is a similar chart for Class Counsel  
26 AARP.

27 7. On April 26, 2010, upon noticing the absence of Exhibits P and Q from  
28 Defendants' filing, I emailed Mr. Hurley and his associate, Alana Cho, requesting information

1 about these missing exhibits. I stated in part: "If you did intend to file additional exhibits, or if  
2 we have missed something that was filed, please let us know immediately." A true and correct  
3 copy of this email is attached hereto as **Exhibit C**.

4 8. Defense counsel did not respond to this email or otherwise communicate with  
5 Plaintiffs' counsel regarding these missing exhibits.

6 9. Instead, on April 28, 2010 – one day before Plaintiffs' reply in support of their fee  
7 motion was due – Defendants filed a "Notice of Errata Re Defendants' Opposition to Plaintiffs'  
8 Motion for Reasonable Attorneys' Fees and Costs – Exhibits P and Q to Declaration of Gregory  
9 F. Hurley." Docket No. 494. I have reviewed this document, and it provides no excuse or  
10 explanation regarding this errata or why Exhibits P and Q were not timely filed with Defendants'  
11 opposition.

12 10. Along with the foregoing Notice of Errata filed as Docket No. 494, on April 28,  
13 2010, Defendants for the first time filed Exhibits P and Q. Exhibit P constitutes 482 pages of  
14 charts identifying deductions Defendants request from fees sought by Plaintiffs' counsel DRA.  
15 Docket No. 494-1. Exhibit Q constitutes 48 pages of charts identifying deductions Defendant  
16 request from fees sought by Plaintiffs' counsel Skadden, Arps. Docket No. 494-2.

17 11. Because Defendants did not file Exhibits P and Q until the day before Plaintiffs'  
18 reply was due, I lacked sufficient time to review and respond to the many hundreds of deductions  
19 Defendants request from fees claimed by Plaintiffs. My cursory review of some of the purported  
20 deductions revealed that many were unsupported and/or based upon inaccurate information. For  
21 example, the first two entries on the page identified as "Exhibit P Page 137" identify the reason  
22 for the deductions as a "Billing Mistake." According to these entries, Defendants imply that Ms.  
23 Kimber billed on August 21, 2008 for a venue hearing that had occurred the month before. The  
24 chart prepared by Defendants states that the "venue hearing was on 7/31/2008." However, there  
25 were two venue hearings in the state action: one on July 31, 2008 and another on August 21,  
26 2008. Attached hereto as **Exhibit D** is a true and correct copy of the order in the state action  
27 following the second venue hearing on August 21, 2008, which these time entries accurately  
28 reflect.

1  
2 I declare under penalty of perjury under the laws of the United States that the foregoing is  
3 true and correct to the best of my knowledge.

4  
5 Executed on April 29, 2010, in Berkeley, California.

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8 Ronald Elsberry

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